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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re *Ex Parte* Application of
Path Network, Inc. and Tempest Hosting,
LLC,
Applicants.

CASE NO. 3:23-MC-80148-JST

**DECLARATION OF HANNAH A. BOGEN
IN SUPPORT OF PATH NETWORK INC.
AND TEMPEST HOSTING, LLC'S
OPPOSITION TO RENE ROOSEN AND
GAME SERVER KING'S CORRECTED
MOTION TO INTERVENE AND QUASH,
MODIFY, OR STAY EXECUTION OF THE
SUBPOENA TO DISCORD, INC.**

1 I, Hannah A. Bogen, declare as follows:

2 1. I am a member in good standing of the California bar and counsel for Path Network,
3 Inc. (“Path”) and Tempest Hosting, LLC’s (“Tempest”) in this matter. I make this declaration in
4 support of Path and Tempest’s Opposition to Rene Roosen (“Roosen”) and Game Server King’s
5 (“GSK”) Corrected Motion to Intervene and to Quash, Modify, or Stay Execution of the Subpoena
6 to Discord, Inc. (“Motion”; “Opposition”).

7 2. The Canadian Proceedings as defined in the Opposition (p. 2 n.3) include Path and
8 Tempest’s civil suit against Curtis Gervais and Packet Rabbit Inc. filed in Ontario Superior Court
9 of Justice (the “Canadian Court”), case file no. CV-22-00000100-0000, and the Anton Piller,
10 Stand and Deliver, and Injunctive Orders (collectively, the “Orders”) issued in connection with
11 that suit, which, together, permit Path to engage in pre-litigation injunctions for the preservation
12 and collection of material that would be produced in discovery for use in the above-mentioned
13 civil suit, and have the same case file number.

14 3. In connection with preparing this declaration, I obtained the following materials
15 from Path and Tempest’s counsel in Canada:

- 16 a. **Exhibit A** attached hereto, which is a true and correct copy of the Canadian
17 Court’s May 11, 2023 Endorsement extending the Orders until July 27, 2023.
- 18 b. **Exhibit B** attached hereto, which is a true and correct copy of the Canadian
19 Court’s July 27, 2023 Endorsement extending the Orders until October 19, 2023.
- 20 c. **Exhibit C** attached hereto, which is a true and correct copy of the Canadian
21 Court’s October 11, 2023 email stating that “in light of [an] anticipated motion
22 to transfer the case”, the Court was “vacating the October 19th date” and
23 ordering that “[a]ll remaining issues/procedures [be] suspended while awaiting
24 the outcome of the motion to transfer.”

25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct. Executed on February 5, 2024, in Los Angeles, California.

27 

28 _____
Hannah A. Bogen

EXHIBIT A

PATH NETWORK, INC. et al.

Plaintiffs

v.

CURTIS MICHAEL GERVAIS et al.

Defendants

May 11, 2023

Plaintiff's Motion seeking access to the relevant evidence seized under the Anton Piller Order agreed. Decision taken under reserve. The other motions previously scheduled for trial are adjourned to a date or dates to be set by the TTC in consultation with Counsel. The Orders granted at the ex parte hearing are hereby updated to the hearing of the set aside

Motion on July 27, 2023, and a without prejudice basis. The parties are enabled to another Case Conference ~~and~~ subsequent to the release of my decision in order to discuss the other motions, as arranged with the TTC. Adams

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
PERTH**

**RESPONDING MOTION RECORD OF THE
PLAINTIFFS**

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Lawyers for the Plaintiffs

EXHIBIT B



ONTARIO SUPERIOR COURT OF JUSTICE
Perth

ENDORSEMENT / ORDER

CV-22-00000100-0000

Court File No.

BETWEEN

PATH NETWORK, INC. ; TEMPEST HOSTING LLC

Plaintiff(s)/Applicant(s)

- and -

CURTIS MICHAEL GERVAIS; PACKET RABBIT INC. ; JOHN DOES; JANE DOES; DOE CORPORATIONS

Defendant(s)/Respondent(s)

BEFORE: Justice FAMILY COURT JUDGE - B. ABRAMS.

HELD BY: ☒ In person ☐ Videoconference ☐ Teleconference ☐ In writing ☐ Hybrid

DATE: July 27, 2023 at 10:00am

EVENT TYPE: Hearing - application on notice

APPEARING: (Names and email addresses)

Plaintiff(s)/Applicant(s): PATH NETWORK, INC.

Present ☐

Representative: NORMAN GROOT (mhastings@investigationcounsel.com)

Present ☒

Plaintiff(s)/Applicant(s): TEMPEST HOSTING LLC

Present ☐

Representative: NORMAN GROOT (mhastings@investigationcounsel.com)

Present ☒

Defendant(s)/Respondent(s): CURTIS MICHAEL GERVAIS

Present ☒

Representative:

Present ☐

Defendant(s)/Respondent(s): PACKET RABBIT INC.

Present ☐

Representative:

Present ☐

Defendant(s)/Respondent(s): JOHN DOES

Present ☐

Representative:

Present ☐

Defendant(s)/Respondent(s): JANE DOES

Present ☐

Representative:

Present ☐

Defendant(s)/Respondent(s): DOE CORPORATIONS

Present ☐

Representative:

Present ☐

CV-22-00000100-0000

Court File No.

Third Party or Parties

Present ☐

Representative:

Present ☐

RELIEF REQUESTED:

☐ Per notice of motion/application ☐ Per notice of appeal ☐ Other (specify):

DISPOSITION:

- ☐ Order to go in the form of consent / draft order submitted
- ☐ Order to go as asked in paragraph(s) _____ of relief requested
- ☐ Costs of \$ _____ on a _____ indemnity basis
are payable by _____ to _____ by _____, 20__.
- ☐ Parties to provide submissions as to costs of no more than ____ pages by _____, 20__.
- ☐ Parties to attend before me to make oral submissions on costs on _____, 20__.
- ☐ Other (specify below):
- ☐ No formal order need be taken out.

BRIEF REASONS (if any):

CV-22-00000100-0000 Endorsement – July 27th, 2023

Brief Reasons:

Case conference today. Order to go for the following:

[1] On consent, the Defendant's motions previously served and filed shall proceed to argument on October 19, 2023 @ 2:00pm, marked for 2.0 hours in total, both motions. No further materials shall be filed in respect of the motions absent leave of the court.

[2] On consent, there shall be a stay of my decision to release the relevant evidence seized as a result of the search pending the Defendant exhausting its rights of appeal to the Divisional Court and to the Court of Appeal thereafter depending on whether there is success at the Divisional Court.

[3] The date and time of the "set-aside motion" shall be adjourned to a further case conference as arranged by counsel in consultation with the trial coordinator, subject to the Defendants' rights of appeal as earlier mentioned.

[4] The current orders arising from the ex parte hearing are hereby extended to October 19, 2023 subject to the parties and counsel reaching terms of a variation of the relief granted.

[5] The Plaintiff asks that the Defendant serve and file a statement of Defence so that pleadings can be closed. The Defence is long overdue. The Defendant resists the request to serve and file a Defence by asserting that to do so would be prejudicial in that he would be required to plead to material facts that ought never had to have been contained in the Notice of Action, as he contends, which his motion to strike shall address.

[6] I have no process before me to deal with this issue today. I am prepared to deal with it, however, by way of a motion in writing. Therefore, the Defendant shall, within 14 days, serve and file a motion seeking to extend the date to serve and file his defence, limited to no more than 10 pages total. The Plaintiff shall have 7 days to serve and file materials setting out its opposition, with the same limitation. I will then rule on the matter.

July 28, 2023

Abrams

The Hon. Mr. Justice Brian W. Abrams
Superior Court of Justice

EXHIBIT C

From: Abrams, Mister Justice Brian (SCJ) <Brian.Abrams@scj-csj.ca>
Sent: Wednesday, October 11, 2023 2:16 PM
To: Norman Groot <ngroot@investigationcounsel.com>; mkatzman@katzmanlitigation.com
Cc: Kydd, Mary (MAG) <Mary.Kydd@ontario.ca>; Geoff Keeble <gkeeble@investigationcounsel.com>
Subject: RE: Path Net v. Gervais CV-22-0100 Transfer - status of the October 19th appearance

Dear Counsel,

In light of the anticipated motion to transfer, I have advised the Trial Co-Ordinator to vacate the October 19th date.

I will deal with costs, if any, arising from the preserved evidence motion.

All remaining issues/procedures are hereby suspended while awaiting the outcome of the motion to transfer.

The Honourable Mr. Justice Brian W. Abrams

Local Administrative Justice for Perth, Lanark County
Ontario Superior Court of Justice